

Waste Evaluation and Enforcement Branch Staff Report

Summary of the City of Commerce's Compliance Review and Consideration of the Issuance of Compliance Order CO 017-003

SUMMARY

The Department of Resources Recycling and Recovery (Department) conducted a review of the City of Commerce's (City) implementation of, and compliance with California's Recycling of Commercial Solid Waste Law, referred to as the Mandatory Commercial Recycling (MCR) law (California Public Resources Code (PRC) sections 42649-42649.7 and California Code of Regulations (CCR) sections 18835-18839). PRC section 42649.3 requires the Department to review whether a jurisdiction has complied with, or made a good faith effort to comply with, the requirements of the MCR law. For purposes of this evaluation, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement its MCR program. The evaluation of good faith includes, but is not limited to, the factors found in PRC section 42649.3 (i)((1)-(7)).

Based on the Jurisdiction Compliance Unit (JCU) staff's observations, the following key deficiencies, as well as other details described in the report demonstrate the City has not made a good faith effort to comply with the requirements of the MCR law.

- The City did not implement a commercial solid waste recycling program that was designed to divert commercial solid waste from businesses within the City, which are subject to PRC section 42649.2 and CCR section 18837.
- The City did not provide documentation supporting the efforts it has taken to notify businesses and multi-family complexes of noncompliance with the MCR law (PRC section 42649 (i)(4) and CCR section 18838 (a)(2)).
- The City's Annual Reports for 2012, 2013, 2014, and 2015, submitted on or before the August due date, were incomplete regarding implementation of the requirements of the MCR law (PRC section 42649.3 (g) and CCR section 18838 (h)). Follow-up by Local Assistance and Market Development (LAMD) and JCU staff did result in some additional information, however, reporting was still incomplete and did not provide details to support that the City made all reasonable and feasible efforts to implement the following components of their program:
 - Identification
 - Monitoring
 - Enforcement

Based on JCU staff's review and analysis, JCU staff recommends that a Compliance Order (CO) be issued. As part of the CO, the City would be directed to develop a Local Implementation Plan (LIP). The LIP will identify a strategy for program enhancements, and local actions necessary to enable the City to meet the requirements of the MCR law.

JURISDICTION COMPLIANCE HISTORY

The City does not have any prior CO's, nor has it filed for extensions to improve diversion programs to meet the diversion requirement of PRC 41780.

Based on historical records and previous findings, the City was included in the four-year Jurisdiction Review cycle.

BACKGROUND

Statutory Requirements for Department Review and Enforcement Action

PRC section 42649.3 requires that on and after July 1, 2012, each jurisdiction shall implement a commercial solid waste recycling program appropriate for that jurisdiction designed to divert commercial solid waste from businesses subject to PRC section 42649.2, whether or not the jurisdiction has met the requirements of PRC section 41780. Each jurisdiction is also required to report the progress achieved in implementing the MCR law, including identification, monitoring, education, outreach, and if applicable, enforcement efforts, by providing updates in the Annual Report required by PRC section 41821.

PRC section 42649.3 requires the Department to review whether a jurisdiction has complied with, or made a good faith effort to comply with, the requirements of the MCR law. For purposes of this evaluation, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement its commercial recycling program in accordance with the MCR law (PRC section 42649.3(i)).

Pursuant to PRC section 42649.3(g), the Department is to review a jurisdiction's compliance with the MCR law as part of the Jurisdiction Review required by PRC section 41825. The Department may also evaluate whether a jurisdiction is in compliance at any time that the Department receives information that the jurisdiction has not implemented, or is not making a good faith effort to implement its commercial recycling program (PRC section 42649.3(h)).

In determining whether the jurisdiction has made a good faith effort to comply with the requirements of the MCR law, the Department's evaluation may include, but is not limited to, the following factors:

- The extent to which businesses have arranged for recycling services in compliance with PRC Section 42649.2, including information on the amount of disposal that is being diverted from the businesses, if available, and on the number of businesses that are subscribing to recycling services;
- The recovery rate of the commercial waste from the material recovery facilities that are utilized by the businesses;
- The extent to which the jurisdiction is conducting education and outreach to businesses;
- The extent to which the jurisdiction is monitoring businesses, and notifying those businesses that are out of compliance;
- The availability of markets for collected recyclables;
- Budgetary constraints; and
- For rural jurisdictions, the effects of small geographic size, low population density or distance to markets.

The Department is also required to consider the enforcement criteria included in its enforcement policy that was amended and approved in June 2015 (PRC section 41825(e)(3)).

If the Department determines that the jurisdiction did not comply with, or make a good faith effort to comply with the MCR law, the Department may issue a Compliance Order.

Prior to issuing a notice of intent to issue a Compliance Order, PRC section 41825(c)(1) requires the Department to confer with the jurisdiction for at least 60 days regarding conditions relating to the proposed order of compliance.

If, after conferring with the jurisdiction, the Department makes a determination that a compliance order should be issued, PRC section 41825(c)(2) requires the Department to issue a notice of intent to issue a Compliance Order not less than 30 days prior to conducting the hearing to consider issuing the Compliance Order. At any time prior to the hearing, at the hearing, or after the hearing the Department may decide not to commence compliance action if it finds that the jurisdiction has made a good faith effort to implement the MCR law.

Fines of up to \$10,000 per day may be imposed if the provisions of the Compliance Order and schedule are not met by the jurisdiction (PRC section 41850).

The Department's Review Process

LAMD staff's 2012-2015 review determined that the City had gaps in its MCR implementation. Based on this determination, LAMD referred the jurisdiction to JCU for an independent Jurisdictional Review. On March 22, 2017, LAMD notified the City that an independent review of the City's MCR implementation was necessary (Attachment 1). On March 30, 2017, JCU staff initiated the 60-day conferring process required by PRC Section 41825 (Attachment 2).

JCU conducted an independent jurisdictional review, which extensively reviews and analyzes data and documentation to understand a jurisdiction's MCR implementation efforts. The review, included, but was not limited to:

- Communications with the jurisdiction (phone calls, emails, and letters) to learn about the community and the MCR program offered.
- Requesting approval from the jurisdiction to communicate with any of the hauler(s) (whether under contract or not) on behalf of the jurisdiction to obtain records related to, but not limited to, the total number of accounts serviced, and the total tons of collected recyclables and waste from the jurisdiction.
- Commercial cart and bin field evaluations.
- Tracking efforts to amend or award franchise agreements or other contracts that can have an impact on a jurisdiction's implementation of the MCR program.

In March 2017, JCU began its independent review of the City's MCR program implementation, using available information from the City's Annual Reports, Department databases, and communications between the Department and the City. This review focused on the commercial waste generators (as defined by PRC 42649.1 (c)) and multi-family residential complexes of five units or more, and included visits to the City's facilities.

Concurrently, since April 18, 2017, Commerce's City Council had an agenda item #14: Commercial Refuse Management. The City reported the postponing of the agenda item until the April 24, 2017 City Council meeting. Upon further inquiry by Department staff, City staff said that the City attorney was reviewing the document. No updates were found on the City's website regarding any actions taken by the City. Additionally, the City's staff reported that the City Council planned to consider providing direction to establish an exclusive franchise agreement type of system for commercial refuse and recycling services. As of the preparation of this report, no further updates had been provided.

ANALYSIS

Overview of Jurisdiction Demographics and Infrastructure

Existing Jurisdiction Conditions

The City is located in southeastern Los Angeles County. According to the 2010 U.S. Census Bureau, the City encompasses approximately 6.5 square miles. The City has a population of 13,064 (Department of Finance, 2015). According to the jurisdiction's base year history (dated 2000), 97 percent of the City's total waste generation is from the non-residential waste stream.

Summary of City's Solid Waste Infrastructure and Materials Flow

Commercial businesses and multi-family complexes are allowed to select their own waste collection service provider as well as the size of the bins for their site. Waste bins range from two (2) to forty (40) cubic yards. Waste collection frequency varies depending on an account's needs and size of bins. The City's Municipal Code section 6.11.080 requires that waste and recycling haulers obtain a business license to operate in the City. The City has reported there is an open competition amongst 52 permitted commercial waste and recycling collection haulers. The permitted haulers are using two (2) landfills, four (4) transfer stations, seven (7) material recovery facilities (MRFs), and numerous recycling facilities in the Los Angeles region.

Findings and Observations of the Jurisdiction's Mandatory Commercial Recycling Program

Below is a detailed analysis of the City's program, and the City's efforts to implement the program, the law and reporting requirements. The analysis includes the program deficiencies, which lead to the determination of good faith effort or lack thereof.

Commercial businesses that generate four (4) cubic yards or more of waste per week, and multi-family complexes of five (5) or more units must comply with the MCR law. Described below are staff's findings of what was found at both commercial businesses, multi-family complexes, and at the solid waste and recycling facilities accepting the materials produced by the jurisdiction. Since multi-family complexes are serviced on the same routes as businesses, the solid waste and recycling facilities analysis reflects what is happening with the MCR waste stream as a whole. JCU staff's field visit photo report (Attachment 3) contains visual documentation of many of the observations detailed below.

Commercial Business Diversion

About the Program and Efforts:

On-Site Collection: The City has a mandatory commercial recycling ordinance that applies to all businesses that generate four (4) cubic yards or more of trash per week. Materials accepted for recycling are identified by the City's agency director for which markets exists, including, but not limited to, plastic bottles and jars, paper, cardboard, glass, newspaper, metal containers, cans, as well as compostable materials such as green waste or food waste.

Self-Haul: The City's ordinance includes a self-hauler permit for recyclables. Permitted self-haulers are required to report on a monthly basis to the City the type, quantity, volume, weight and destination of materials recycled.

Recent Efforts by the City: The City has reported that it is currently considering establishing a nonexclusive franchise agreement with commercial haulers that would set terms for reporting and enforcement of MCR.

Facts and Observations Related to On-Site Commercial Business Recycling Efforts:

- The City reported having 1800 businesses, of these 139 businesses meet the MCR definition of a business and are required to recycle under the MCR law. Of the 139 businesses that are required to recycle, 44 businesses were participating in recycling services. This is a participation rate of 31.6 percent. The City stated that the reported data is based on nine (9) of 52 haulers reporting information, thus 43 haulers (82.6%) are not reporting business recycling efforts. It is unknown to staff if these haulers account for a small or large percentage of businesses serviced in the City, furthermore the City was unaware as well. Staff's review of the City's reported values has raised questions regarding the accuracy of the City's participation rate.
- The City adopted ordinance number 643 on May 1, 2012 adding to the City's municipal code, Chapter 6.11 Commercial Recycling, sections 6.11.010 – 6.11.100 that became effective on July 1, 2012. The ordinance includes, but is not limited to identification of who the ordinance applies to, provides exemptions, outlines its implementation, and includes compliance and enforcement. In reviewing the ordinance and its implementation, staff found the following:
 - The City's program relies on the 52 haulers to service the City.
 - The haulers are required to provide recycling services, MCR education, monitor overall effectiveness, and submit monthly reports using the "City of Commerce Commercial Recycling Report".
- The City's program includes a Self-haul option. Residents or property owners can apply for a permit to haul their own recyclables. Self-haulers are required to report to the City on a monthly basis the type, quantity, volume, weight and destination of recyclables removed.
- The City's program includes compliance and enforcement provisions. The City grants its agency director (or their designee) the authority to administer and enforce the City's program. Enforcement can include termination or suspension of a haulers franchise and/or business license for failure to file recycling reports (City of Commerce Recycling Report). Self-haulers can have their permit revoked and be

- required to obtain commercial recycling services from a City authorized hauler.
- JCU staff's analysis discovered that the City is not implementing the program as described in the City's ordinance:
 - Only nine (9) of the 52 haulers have submitted reports.
 - The City did not report any businesses have obtained a self-haul permit.
 - The City reported to JCU staff that no enforcement actions have been taken against haulers or self-haulers.
 - JCU staff visited approximately 45 sites within the City and found a total of four (4) recycling bins. Sites visited included individual businesses, strip malls, and light industrial complexes from various haulers and had various rates of contamination. JCU staff's field visit photo report (Attachment 3) contains visual documentation of waste and recycling services in the City. Staff's inspection of the Citadel Outlets (representing one of the 45 sites visited) found a number of cardboard compactors as well as trash compactors around the complex for the businesses to use. A number of businesses were found to be staging cardboard outside their back doors or adjacent to the cardboard compactors. Staff's inspection of the Commerce Casino found that they were collecting and compacting cardboard and plastic bottles for recycling, and collecting glass in recycling totes.

Facts and Observations Related to On-Site Commercial Business Waste Collection:

- JCU staff visited approximately 45 sites within the City and observed 11 different haulers servicing these sites. JCU staff observed two (2) to six (6) cubic yard waste bins, waste compactors and 40-yard dumpsters at different businesses throughout the City. At one site JCU staff observed a waste bin which appeared to contain 100% cardboard.

Multi-Family Complex Diversion

About the Program and Efforts:

On-Site Collection: The City has a mandatory commercial recycling ordinance that applies to all multi-family residential complexes with at least five (5) units or more. Materials accepted for recycling are identified by the City's agency director for which markets exists, including, but not limited to plastic bottles and jars, paper, cardboard, glass, newspaper, metal containers, cans, as well as compostable materials such as green waste or food waste.

Self-Haul: The City's ordinance includes a self-hauler permit for recyclables. Permitted self-haulers are required to report, on a monthly basis, to the City the type, quantity, volume, weight and destination of recycles.

Recent Efforts by the City: The City reported that it is currently considering establishing a nonexclusive franchise agreement with commercial haulers that would set terms for reporting and enforcement of MCR.

Facts and Observations Related to On-Site Multi-Family Complex Recycling Efforts:

- The City reported on December 30, 2015, in response to LAMD's request for additional information regarding the City's 2014 Annual Report, having 628 multi-

family complexes in the City. The City did not identify how many of these meet the MCR definition of a multi-family complex. The City reported that most units do not have recycling services due to space constraints on their properties. The City did not report receiving nor approving any exemption requests for multi-family complexes as defined in the City's commercial recycling ordinance. During JCU staff's field visit, two (2) multi-family complexes were inspected. Neither of the facilities had recycling services. JCU staff did not observe that there was inadequate space preventing placement of recycling bin(s).

- The City's program includes a self-haul option. Residents or property owner can apply for a permit to haul their own recyclables. Self-haulers are required to report to the City on a monthly basis the type, quantity, volume, weight and destination of recyclables removed. The City did not report any multi-family complexes participating in the self-haul option.

Facts and Observations Related to On-Site Multi-Family Complex Waste Collection:

JCU staff observed a four (4) cubic yard waste bin that appeared to be shared between two (2) multi-family complexes. JCU staff was unable to inspect the composition of the waste bin as the restraining bar was engaged and padlocked.

Jurisdiction Compliance with the Notification Requirement of Noncompliant Commercial Businesses and Multi-Family Complexes

As outlined in PRC section 42649.3(d) a jurisdiction's solid waste recycling program shall include education, outreach to, and monitoring of, businesses. A jurisdiction is also required to notify those businesses and multi-family complexes that are not in compliance with PRC section 42649.2. Below outlines the City's efforts to comply with the notification aspect of the MCR law.

Facts and Observations:

- Staff was unable to verify if past notifications were distributed. A request was made of the City for supporting documentation. The City did not provide any documentation regarding efforts made in 2012, 2013, 2014, or 2015 to support implementation of this requirement.
- In 2017, when JCU staff inquired what the City's efforts are to notify businesses and multi-family complexes, the City responded that they rely on the haulers to notify their customers if recycling services are required and of their noncompliance with the MCR ordinance and law. At the time this report was prepared, the City had not submitted any evidence of haulers providing the required notifications of noncompliance nor did they provide the frequency in which the notifications are given.

Solid Waste and Recycling Facility Facts and Observations

Due to a lack of verifiable information from the various haulers regarding destinations for the collected waste and recyclables, JCU staff was unable to complete an analysis.

Conclusions:

The City reported a participation rate of 31.6 percent of businesses and zero (0) percent of multi-family complexes, however, JCU staff's review of the City's reported values has raised

questions regarding the accuracy of the City's reported participation rates. The jurisdiction is not implementing or enforcing its ordinance relative to reporting from haulers or self-haulers. Businesses are not complying with the ordinance and there is no enforcement. Furthermore, based on the facts and observations above the City is noncompliant with the notification requirements in 2012-2015. Based on this and the above analysis, the City has not demonstrated that it has made all reasonable and feasible efforts to implement a program designed to recycle commercial waste from businesses or from multi-family complexes subject to the MCR law.

Jurisdiction Compliance with the Annual Reporting Requirement

Pursuant to PRC section 42649.3(g) and CCR section 18838(h) each jurisdiction is required to report the progress achieved in implementing the MCR law, including identification, monitoring, education, outreach, and if applicable, enforcement efforts. PRC section 42649.3(g) requires the jurisdiction to include its progress in the Annual Report required by PRC section 41821. Below is a detailed analysis of the City's reporting efforts and includes reporting deficiencies which lead to the Department's determination of good faith effort or lack thereof.

Summary: JCU conducted an analysis of the City's 2012, 2013, 2014, and 2015 Annual Reports and prepared a chart of its findings regarding the information reported in the City's Annual Reports for the years covered by this review. The 2016 Annual Report is currently under review by LAMD and was not considered in this staff report.

	Review Period				Additional Data
	2012	2013	2014	2015	2017**
Total Businesses				135*	1800*
MCR Businesses	Not reported	Not reported	Not reported	64	139
MCR Businesses Recycling	Not reported	Not reported	Not reported	Not reported	44
MCR Businesses Not Recycling	Not reported	Not reported	Not reported	Not reported	Not reported
MCR Multi-Family	Not reported	Not reported	Not reported	Not reported	10
MCR Multi-Family Recycling	Not reported	Not reported	Not reported	Not reported	Not reported
MCR Multi-Family Not Recycling	Not reported	Not reported	Not reported	Not reported	Not reported

* This information is not required.

**2017 data reflects the data reported by the City in response to JCU's inquiry.

- **Identification**

A jurisdiction is required to identify businesses that dispose of four (4) or more cubic yards of commercial solid waste per week and multi-family residential complexes of five (5) units or more (CCR section 18838 (a)(2)). The jurisdiction must report its progress in identifying these businesses in its Annual Report. As indicated by the above chart:

- In 2012, 2013 and 2014, the City did not report through the electronic annual report (EAR) any commercial businesses or multi-family complexes as being subject to the MCR law. On August 6, 2013 LAMD staff notes indicate the City reported via e-mail regarding the 2012 Annual Report that there were 1300 businesses (the City did not report how many met the definition of MCR) and 632 multi-family complexes (that meet the definition of MCR). In response to LAMD's request for additional information regarding the 2014 Annual Report, the City reported that there were 1800 businesses, an estimated 1200 MCR businesses, and of the 1200 MCR businesses, 1000 are not recycling. Furthermore, there were 628 multi-family complexes that met the definition of MCR.
- In 2015, the City did not report any information regarding MCR businesses or multi-family complexes through the EAR. The City reported that it "is working on gathering MCR data from commercial haulers with the largest market share in Commerce by assembling a contact database, mailing out surveys to haulers and businesses, and focusing on those with the largest market share." LAMD staff followed up and notes indicate the City reported 366 MCR businesses, of which 110 were not recycling. Furthermore, there were 628 multi-family dwellings, 3 of which are subject to MCR but are not recycling.
- As part of JCU's request for data on the jurisdiction's 2017 MCR program efforts, the City reported it coordinates with the Business License Department that provides a list of MCR businesses. The City reported 139 commercial accounts and 10 multi-family accounts were being "serviced for recycling", and that 44 businesses were participating in the City's commercial recycling program. The City notes that these numbers were based on nine (9) of 52 City-licensed haulers reporting MCR information. The City's reported efforts to implement their MCR program is inconsistent with the provisions outlined in the City's ordinance regarding refuse haulers and recyclers. This includes, but is not limited to, the collection of monthly "reports".

- **Monitoring**

A jurisdiction is also required to monitor businesses and multi-family complexes subject to the MCR law to determine whether they are recycling (CCR section 18838 (a)(2)) and report on those efforts in the Annual Report.

- In 2012, the City did not report any monitoring efforts. The City did report that one hauler collects and recycles an average of 18,000 tons of wood pallets per month.
- In 2013, the City did not report any monitoring efforts.
- In 2014, the City did not provide any information about MCR monitoring. In response to LAMD's request for additional information, the City stated it sent a copy of their commercial recycling report form and survey to haulers and requested it be returned to the City on a monthly basis.
- In 2015, the City reported that one (1) hauler provided MCR information. The City

also reported it has an open competition amongst 40+ haulers and is working on gathering MCR data from those with the largest market share in the City. The City did not report on the efforts taken to implement the requirement for all haulers to report monthly.

- In 2017, when JCU staff inquired on monitoring, the City reported that they do not watch, keep track of, and/or check to verify MCR businesses are participating or not participating in a commercial recycling program. The City did report that twice in 2016 it had sent surveys to 1800 businesses and property owners/managers which yielded a return rate of 0% both times. The City provided JCU staff copies of the survey sent to the 1800 businesses. The survey's questions were structured to obtain information from the haulers and recyclers servicing the City, the questions were not related to business or multi-family use or implementation of recycling. This could have contributed to the lack of response to the survey.

- **Education and Outreach**

About the Efforts:

The City reported on print and electronic education and outreach for MCR.

Facts and Observations:

The following was reported within the Annual Reports:

- The 2012 – 2015 Annual Reports contained no information regarding the City's education and outreach efforts. LAMD staff received copies of various outreach materials provided by the City, either through follow up to the Annual Report (for years 2012 and 2013) or during the annual site visit (for years 2014 and 2015).
- In 2017, when JCU inquired on education and outreach efforts:
 - The City reported they did not have information regarding the education and outreach efforts implemented by the haulers (as required by the City's ordinance). The City did report that they provide the *Commercial and Organics Recycling Program* brochure to the haulers and recyclers each year. However, when further inquiries were made, the City was not able to provide information supporting how this information was being provided.
 - The City did report that beginning in May of 2016 that the City distributed the following:
 - The City's *Commercial and Organics Recycling Program* brochure included in business license renewal notices;
 - A letter mailed to businesses with the subject "Updated Commercial and Organics Recycling Program". A copy of the mailing was provided to staff. The letter notifies those receiving the letter that to comply with State requirements of Assembly Bill 341 that the City added a Chapter 6.11 - Commercial Recycling Ordinance No. 643 which became effective on July 1, 2012. The second page of the letter contained a survey. As stated above, the survey's questions were structured to obtain information from haulers and recyclers. The question were not related to business or multi-family use or implementation of recycling.
 - JCU staff found the City's website has information regarding requirements of businesses and multi-family complexes. Recyclers are informed on how they

can provide a business with recycling services.

- During JCU staff's site visit to City Hall staff was able to obtain MCR information from a kiosk. No other verifiable information regarding the efforts reported were provided.

- **Enforcement (Optional)**

The City enacted on May 1, 2012, Municipal Code Ordinance No. 643 which codified the actions the City may take against a hauler or self-hauler for not complying with the ordinance. The City reported to JCU staff that no enforcement actions have been taken against haulers or self-haulers.

Conclusion:

Based upon the facts and observations above, the City has not made all reasonable and feasible efforts to identify, monitor, and did not report complete and accurate information on an annual basis regarding the businesses and multi-family complexes that are subject to the MCR law.

The City did implement education and outreach to the businesses and multi-family complexes that are subject to the MCR law. However, the City has not provided information regarding the efforts that are required to be made by haulers, per the City's ordinance.

Finally, the City has not reported on the efforts taken to implement the enforcement section of the City's Commercial Recycling ordinance.

In addition to the observations and conclusions described above, the Department also evaluated the factors in PRC section 42649.3 (i)(1)-(7)¹. The following is a summary of staff's analysis of the factors, and the City's efforts:

PRC section 42649.3 (i)(1)-(7) Factor	Staff's Consideration	Staff's Finding
(1) Extent to which businesses have complied with PRC section 42649.2, including information on amount of disposal being diverted (if available) and the number of businesses that are subscribing to service.	For 2017, the data provided by the City for the businesses and for multi-family participation is incomplete. Based on what has been reported, the City's participation rate for businesses is 31.6 percent and for multi-family complexes zero (0) percent.	Does not demonstrate good faith effort.
(2) The recovery rate from the material recovery facilities that are utilized by the businesses.	Due to a lack of verifiable information for the facilities reported to be used by the various	Is not a consideration.

¹ In determining whether the City made a good faith effort to implement its selected commercial recycling program, the Department may consider, but is not limited to, the factors presented in PRC section 42649.3 (i)(1)-(7).)

	haulers, JCU staff was unable to obtain recovery rates.	
(3) The extent to which the jurisdiction is conducting education and outreach.	The City has provided documentation supporting recent efforts taken to implement education and outreach. However, the City could not address how the haulers are meeting the requirements to educate and provide outreach, as required by the City's ordinance.	Demonstrates good faith effort.
(4) The extent to which the jurisdiction is monitoring businesses, and notifying those businesses that are out of compliance.	The City has not provided documentation supporting the efforts taken to monitor and notifying those businesses that are out of compliance.	Does not demonstrate good faith effort.
(5) The availability of markets for collected recyclables.	The City is located in a metropolitan area and is not limited by geography or infrastructure to markets any more than other metropolitan jurisdictions in the State.	Is not a consideration.
(6) Budgetary constraints (Note: PRC section 42649.6 allows a jurisdiction to charge and collect a fee from a commercial waste generator in order to recover the jurisdiction's cost incurred in complying with MCR).	The City has not indicated that budgetary constraints was a factor in its failure to comply with the MCR law.	Is not a consideration.
(7) In the case of a rural jurisdiction, the effects of small geographic size, low population density, or distance to markets.	The City is not a rural community.	Is not a consideration.

Communications and Notification History

March 22, 2017 LAMD notified the City that an independent review of the City's waste management programs was necessary (Attachment 1).

March 30, 2017 JCU staff initiated the 60-day conferring process required by PRC Section 41825 (Attachment 2).

October 13, 2017, the Department mailed the 30-Day Notice of Intent to Issue the City of

Commerce a Compliance Order for Failure to Implement the Mandatory Commercial Recycling (MCR) law (Attachment 4).

Findings

Based on a review of the City's MCR program and reporting, JCU staff finds that the City has not demonstrated that it has made all reasonable and feasible efforts to comply with the requirements of the MCR law (PRC 42649, et al.). In summary:

- The City is not implementing the commercial solid waste recycling program as described in the ordinance. This includes, but is not limited to: requiring participation by all businesses and multi-family complexes that meet the City's definition; fully executing the hauler requirements; and no enforcement efforts have been taken.
- The City did not provide supporting documentation, that it had notified businesses and multi-family complexes of noncompliance with the MCR law.
- The City's Annual Reports for 2012, 2013, 2014, and 2015, submitted on or before the August due date, were incomplete regarding implementation of the requirements of the MCR law. Follow-up by LAMD and JCU staff did result in some additional information, however, reporting was still incomplete and did not provide details to support that the City made all reasonable and feasible efforts to implement the following components of their program:
 - Identification
 - Monitoring
 - Enforcement

Options for Consideration

1. Find that the City is not complying with the MCR law as noted above and,
 - a. Approve the attached Compliance Order as written, or
 - b. Approve the attached Compliance Order with alternate or additional language or conditions.
2. Find that the City has achieved a Good Faith Effort and is adequately complying with the MCR law and not issue the attached Compliance Order.
3. Find that the City is in compliance with the MCR law and not issue the attached Compliance Order.

Staff Recommendation

Department staff recommends Option 1: Find that the City is not complying with the MCR law and approve the attached Compliance Order as written. This recommendation is based on the findings presented within this report which support that the City of Commerce has not complied with, or made a good faith effort to comply with, the MCR law.

The proposed Compliance Order CO (017-003) (Attachment 5) includes the following conditions and implementation schedule:

- The City shall work with Department staff to determine the MCR gaps and develop a Local Implementation Plan (LIP) to improve, expand, or implement new MCR programs and/or efforts.

- The City shall develop and submit to the Department a fully executed LIP by January 31, 2018.
- The City will fully implement the programs and/or efforts in the LIP by June 30, 2018.
- A monitoring/“oversight” period from July 1, 2018 through December 31, 2018. The Department uses this time to ensure the City has continued implementation of the programs identified in the LIP.
- The City will submit quarterly status reports based on the calendar year. These status reports shall use the Department’s electronic reporting format. The City will also attach any required documentation necessary to support their efforts to implement the LIP and Compliance Order.

The Compliance Order requires the Department to hold a public hearing following the term of the compliance schedule to determine whether the City has complied with all of the conditions of the Compliance Order.

The Compliance Order specifies that, at any time, any failure of the City of Commerce to comply with any part of the Compliance Order may result in an earlier public hearing and fines of up to \$10,000 per day. Likewise, a public hearing could be scheduled earlier if the City complies with the Compliance Order ahead of schedule.

ATTACHMENTS

1. March 22, 2017, LAMD notified the City that an independent review of the City’s commercial waste management program was necessary
2. March 30, 2017, City of Commerce’s Notice of 60-Day Conferring Period for Potential Compliance Enforcement
3. Photo Report for the City of Commerce
4. October 13, 2017, 30-Day Notice of Intent to Issue the City of Commerce a Compliance Order for Failure to Adequately Implement and meet the Requirements of the Mandatory Commercial Recycling Law
5. Proposed Compliance Order CO (017-003)
6. Request for Action for Consideration of the Issuance of Compliance Order CO (017-003) to the City of Commerce

STAFF RESPONSIBLE FOR ITEM PREPARATION

Program Staff: Steve Rogers

Legal Staff: Tamar Dyson

Phone: (916) 341-6085

Phone: (916) 341-6083